IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19556 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER - Petitioner(s)
Versus
DEEPAK SHANTILAL SHAH - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 10/05/2007

ORAL JUDGMENT

1. The petitioner has invoked Articles 226 and 227 of the Constitution for challenging the

award and order dated 1.5.2006 of the Industrial Tribunal, Rajkot in Reference (IT) No. 225 of 1999 whereby the order of punishment imposed after an enquiry was modified. The tribunal has, by the impugned order, confirmed the order of punishment of stoppage of one increment without future effect as confirmed in Second Appeal of the respondent. However, the order of punishment in respect of the incident of not issuing tickets to three passengers on 26.8.1996 was modified so as to convert the punishment of stoppage of three increments with permanent effect to an order of stoppage of three increments without future effect, expressly in order to see that the terminal benefits of the respondent were not affected. The financial benefit arising from the modification were also denied and thus, the modification was restricted purely to restore the retiral benefits after removing the effect of the order of punishment.

2. The part of the impugned judgment recording the reasons is obviously perverse and contradictory insofar as, on the one hand it is held, without reference to any evidence, that the allegation against the respondent were not established in the departmental enquiry and the finding of the enquiry was perverse and, on the other hand, it is held that the punishment imposed upon the respondent was too harsh and disproportionate. Having regard to the record of previous defaults which were pointed out by the learned counsel for the petitioner, it would clearly appear that interference with the order of punishment was neither legal nor justified and, therefore, it clearly appears to be a case of misplaced sympathy.

3. Therefore, the impugned award and order is set aside and Rule is made absolute with no order as to costs.

sd/-
[D. H. Waghela, J.]

msp